

ORDERED.

Dated: April 12, 2023



Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:22-bk-00511-FMD
Chapter 13

Ryan Christopher,

Debtor.

**ORDER GRANTING DEBTOR'S
MOTION FOR RELEASE OF FUNDS DEPOSITED IN COURT REGISTRY**

THIS CASE came before the Court for hearing on March 23, 2023, to consider Debtor's *Motion for Release of Funds Deposited in Court Registry* (the "Motion"),¹ and the objection to the Motion filed by American Technology & Services, Inc. ("ATS").² For the reasons set forth below, the Court will grant the Motion and authorize the Clerk of Court to release the funds to Debtor.

¹ Doc. No. 58.

² Doc. No. 65.

I. BACKGROUND

A. The State Court Foreclosure Case

Prior to 2012, Debtor owned residential real property in Naples, Florida (the “Property”). In 2012, Bank of America, N.A., filed a foreclosure action against Debtor in the Circuit Court for Collier County, Florida (the “Foreclosure Case”). On February 10, 2015, the Circuit Court entered a Final Judgment against Debtor and a foreclosure sale of the Property was scheduled for March 9, 2015.³ However, the foreclosure sale was cancelled and rescheduled several times because Debtor filed bankruptcy cases.⁴

Eventually, the foreclosure sale was rescheduled for July 11, 2019. Although Debtor filed another bankruptcy case on July 10, 2019,⁵ the Collier County Clerk of Court conducted the foreclosure sale and ATS was the successful bidder. The Clerk of Court issued a Certificate of Sale reflecting the sale to ATS and thereafter issued a Certificate of Title to ATS; ATS took possession of the Property.⁶

³ See Intervenor’s Motion for Reimbursement of Money Damages filed by ATS in the Foreclosure Case, Doc. No. 65-2, pp. 4-5, ¶¶ 1 and 3.

⁴ Case No. 2:15-bk-02246-FMD; Case No. 2:16-bk-04282-FMD; Case No. 2:17-bk-01362-FMD; and Case No. 2:17-bk-07209-FMD.

⁵ Case No. 2:19-bk-06494-FMD.

⁶ Doc. No. 65, p. 1.

In August 2021, the Florida Second District Court of Appeal vacated the foreclosure sale on the grounds that the sale was void as a violation of the automatic stay imposed in Debtor's July 2019 bankruptcy case.⁷

B. The Bankruptcy Case

On May 11, 2022, Debtor filed his current Chapter 13 bankruptcy case. He did not include ATS on the creditor list filed with his petition or in his schedules. However, on May 11, 2022, Debtor filed a *Suggestion of Bankruptcy and Special Notice of Appearance* in the Foreclosure Case and served a copy of the Suggestion of Bankruptcy on ATS's counsel.⁸ The Suggestion of Bankruptcy disclosed the date and chapter of Debtor's bankruptcy case, the court in which the bankruptcy case was filed, and the bankruptcy case number.

On May 13, 2022, the Bankruptcy Court issued a *Notice of Chapter 13 Bankruptcy Case* informing listed creditors that Debtor had filed the case, that the deadline to file a proof of claim was July 20, 2022, and that the initial hearing to consider confirmation of Debtor's Chapter 13 plan was scheduled for August 11, 2022 (the "Notice").⁹ ATS was not served with the Notice.¹⁰

⁷ See Intervenor's Motion for Reimbursement of Money Damages filed by ATS in the Foreclosure Case, Doc. No. 65-2, p. 5, ¶ 17.

⁸ Doc. No. 64-1.

⁹ Doc. No. 5.

¹⁰ Doc. No. 8.

On June 8, 2022, Debtor filed his initial Chapter 13 Plan.¹¹ On the same date, Debtor's counsel served Debtor's schedules and initial Chapter 13 Plan on the Court's service list, but he did not serve them on ATS.¹²

On July 8, 2022, Debtor filed a motion to sell the Property to third-party buyers.¹³ Again, Debtor served the motion to sell on the Court's service list, but did not serve ATS. In the motion to sell, Debtor requested authority to sell the Property and, at closing, to pay liens of BSI Financial Services and Villa Vistana Homeowners' Association, Inc. and other sale costs. The homeowners' association objected to the proposed sale because it did not provide for payment of postpetition amounts owed to the association.¹⁴

On July 15, 2022, Debtor filed an amended motion to sell the Property in which he addressed the association's objection (the "Sale Motion").¹⁵ The terms of sale were otherwise the same as disclosed in the first motion. The Court scheduled the Sale Motion for hearing on July 28, 2022 (the "Sale Hearing").

On July 28, 2022, two hours before the Sale Hearing, an attorney for ATS filed (1) a Notice of Appearance and Request for Bankruptcy Notice, docketed as an "emergency" notice of appearance,¹⁶ and (2) an objection to the Sale Motion asserting

¹¹ Doc. No. 19.

¹² Doc. No. 20.

¹³ Doc. No. 21.

¹⁴ Doc. No. 24.

¹⁵ Doc. No. 26.

¹⁶ Doc. No. 34.

that ATS holds a claim against the Property in the amount of \$96,043.67.¹⁷ To support its objection, ATS attached documents related to its ownership of the Property after the foreclosure sale, including an *Emergency Motion for Equitable Lien* that ATS had filed in the Foreclosure Case on July 18, 2022.¹⁸

Counsel for ATS attended the Sale Hearing. After considering the Sale Motion and the arguments of counsel, the Court granted the Sale Motion and authorized Debtor to sell the Property, on the condition that Debtor pay any net proceeds of the sale (the “Sale Proceeds”) into the registry of the Bankruptcy Court pending further Court order.¹⁹

On August 11, 2022, the Court held an initial hearing to consider confirmation of Debtor’s Chapter 13 Plan and continued the hearing to November 17, 2022. ATS’s attorney received notice of the continued confirmation hearing through the Court’s electronic filing system (“CM/ECF”).²⁰

On August 12, 2022, Debtor sold the Property pursuant to the Court’s authorization and received net Sale Proceeds in the amount of \$113,135.28. On August 15, 2022, the Sale Proceeds were deposited into the Court’s registry.

¹⁷ Doc. No. 35.

¹⁸ Doc. No. 35, pp. 29-38.

¹⁹ Doc. Nos. 38, 39.

²⁰ Doc. No. 41.

On August 30, 2022, Debtor filed an Amended Chapter 13 Plan (the “Plan”).²¹

Paragraph E of the Plan, titled “Nonstandard Provisions,” states:

Debtor requests that all net sale proceeds from the sale of Debtor’s home paid into the United States Bankruptcy Court for the Middle District of Florida’s Registry be returned to the Debtor in full upon confirmation of this Chapter 13 Plan.

Debtor served the Plan on ATS’s counsel by email and also by U.S. mail to the attorney’s physical address.²² ATS did not file an objection to the Plan or appear at the continued confirmation hearing on November 17, 2022.

The Court confirmed the Plan without opposition at the November 2022 confirmation hearing and entered a written *Order Confirming Plan* on December 2, 2022.²³ On December 5, 2022, the Chapter 13 Trustee served a copy of the Order Confirming Plan on ATS at its attorney’s address.²⁴ In addition, ATS’s attorney received notification via CM/ECF of (1) the confirmation of the Plan at the confirmation hearing, (2) the entry of the Order Confirming Plan, and (3) the Chapter 13 Trustee’s Certificate of Service of the Order Confirming Plan.²⁵

On December 6, 2022, Debtor filed the *Motion for Release of Funds Deposited in Court Registry* (the “Motion”), asserting that his confirmed Chapter 13 Plan provided for the return of the Sale Proceeds, that no party objected to the Plan, that the Court

²¹ Doc. No. 48.

²² Doc. No. 49.

²³ Doc. No. 56.

²⁴ Doc. No. 57.

²⁵ Doc. Nos. 55, 56, 57.

confirmed the Plan, and that all creditors were bound by the confirmed Plan under 11 U.S.C. § 1327(a).²⁶ Debtor served the Motion on ATS's counsel by email and by U.S. mail. The Court scheduled a hearing on the Motion for January 5, 2023.

On January 4, 2023, ATS filed an objection to the Motion, which it refiled on January 5, 2023, to correct a technical error.²⁷ Generally, ATS contends that it holds a claim against the Sale Proceeds to compensate it for the improvements that it made to the Property while ATS was the title owner. ATS refers to the Affidavit of Paul Mehta filed in the Foreclosure Case, in which Mr. Mehta states that ATS is owed \$96,043.67 for the "maintenance, improvement, and preservation" of the Property during its ownership.²⁸

On January 5, 2023, Debtor filed a response to ATS's objection.²⁹ Debtor first asserted that ATS was foreclosed from claiming an interest in the Sale Proceeds because it had received notice of Debtor's Bankruptcy Case and Plan but had "sat on its rights"³⁰ by failing to file a proof of claim or objection to the Plan. Second, Debtor acknowledged that ATS "did in fact make some improvements to the Property" during its ownership, but that ATS had removed the improvements and "nearly every original fixture"³¹ by the time it returned possession of the Property to Debtor.

²⁶ Doc. No. 58.

²⁷ Doc. Nos. 63, 65.

²⁸ Doc. No. 65-3, pp. 15-16.

²⁹ Doc. No. 64.

³⁰ *Id.*, p. 3, ¶ 12.

³¹ *Id.*, p. 4, ¶ 14.

At the January 5, 2023, hearing on the Motion, the Court directed the parties to mediation to resolve their competing claims to the Sale Proceeds and scheduled a further hearing for March 23, 2023.³² The mediation was not successful.

Prior to the March 23, 2023 continued hearing, Debtor filed two affidavits in support of the Motion: (1) Debtor's affidavit, in which he attests that ATS damaged the Property before returning it to him by ripping out the "newly installed kitchen cabinets, master bathroom vanities, toilets, bathtub, several light fixtures and drywall," among other damage;³³ and (2) the affidavit of Debtor's real estate agent for the sale of the Property, who attested that the remodeling work on the kitchen and master bathroom was left unfinished, which caused the Property to sell for less than market value.³⁴

ATS's attorney did not appear at the March 23, 2023 hearing on the Motion and he did not file any further papers in opposition to the Motion. In addition, as of the date of the hearing, ATS had not filed a proof of claim or moved to extend the July 20, 2022, claims bar date in Debtor's bankruptcy case, and it had not filed a motion for relief from the Order Confirming Plan under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any other applicable provision.

³² Doc. Nos. 66, 68.

³³ Doc. No. 73, ¶ 3.

³⁴ Doc. No. 72.

II. ANALYSIS

An order confirming a Chapter 13 plan is a final order subject to appeal.³⁵ In addition, under 11 U.S.C. § 1327(a), the “provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.”³⁶

It is well-settled that the binding effect of an order confirming a Chapter 13 plan under § 1327(a) encompasses all issues that were *or could have been litigated* in the bankruptcy case.³⁷ For example, in *In re Gonzalez*,³⁸ the bankruptcy court confirmed a Chapter 13 plan that provided for payment of a domestic support obligation, but was silent as to whether the Florida Department of Revenue could collect the obligation by withholding reimbursement payments to the debtor.³⁹ Because the issue of the DOR’s right to intercept the payments could have been litigated in the bankruptcy case, the Eleventh Circuit Court of Appeals affirmed the bankruptcy court’s ruling that the DOR was bound by the confirmation order and therefore prohibited from intercepting the payments.⁴⁰

³⁵ *In re Edwards*, 603 B.R. 516, 520 (Bankr. S.D. Fla. 2019) (citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010)).

³⁶ 11 U.S.C. § 1327(a).

³⁷ *In re LaCroix*, 2021 WL 3668040, at *2 (Bankr. M.D. Fla. Aug. 9, 2021) (quoting *In re Gonzalez*, 832 F.3d 1251, 1258 (11th Cir. 2016)).

³⁸ 832 F.3d 1251 (11th Cir. 2016).

³⁹ *In re Gonzalez*, 832 F.3d at 1252.

⁴⁰ *Id.* at 1258.

Furthermore, an affected creditor is bound by the provisions of a confirmed plan even if the provisions are not consistent with other sections of the Bankruptcy Code. In *In re Edwards*, the bankruptcy court confirmed a modified plan providing for payments to a creditor that were not sufficient to cure the debtor's postpetition mortgage obligation.⁴¹ The creditor received notice of the proposed modification but did not object. After completion of the plan, the debtor filed a motion to deem the payments current and the creditor objected. The court ruled that the creditor was bound by the confirmed, modified plan, even though its terms may have violated the anti-modification provision of 11 U.S.C. § 1322(b)(2).⁴²

The only condition to the binding effect of a confirmation order is due process: the debtor must have provided the affected party adequate notice of the plan.⁴³ Where a creditor receives actual notice of the filing and content of the debtor's plan in time to object to confirmation, the creditor's due process rights are satisfied and the creditor may be bound by the confirmed plan.⁴⁴

A. ATS had adequate notice of the Plan.

Here, although Debtor did not list ATS as a creditor in his initial papers filed with his May 11, 2022 bankruptcy petition or in his June 8, 2022 bankruptcy

⁴¹ *In re Edwards*, 603 B.R. at 518.

⁴² *Id.* at 524.

⁴³ *In re Edwards*, 603 B.R. at 522-23 (citing *Espinosa*, 559 U.S. at 275).

⁴⁴ *Espinosa*, 559 U.S. at 272.

schedules, he filed a Suggestion of Bankruptcy in the Foreclosure Case on the petition date and served the Suggestion on ATS's attorney the same day. In addition, the record shows that ATS had *actual* knowledge of Debtor's bankruptcy case no later than July 28, 2022—the date that ATS's attorney filed a notice of appearance in the bankruptcy case, filed its objection to Debtor's Sale Motion, and attended the Sale Hearing.

On August 11, 2022, *after* ATS had appeared in the bankruptcy case, the Court held the hearing to consider confirmation of Debtor's initial Chapter 13 plan and scheduled a continued confirmation hearing for November 17, 2022. ATS's attorney received CM/ECF notification that the hearing was continued to November 17, 2022.

On August 30, 2022, Debtor served the Plan on ATS.⁴⁵ The Plan expressly provided in its Nonstandard Provisions that Debtor sought the return of the Sale Proceeds to him upon confirmation.

Therefore, ATS had notice of Debtor's Plan in August 2022, two and one-half months before the November 2022 continued confirmation hearing. Under these circumstances, the Court finds that ATS had adequate notice of the Plan and its contents in time to object to confirmation.

⁴⁵ Doc. No. 49.

B. ATS did not file a claim or object to the Plan before confirmation.

Despite its knowledge of the Plan as of August 2022, ATS did not file a written objection to confirmation before the November 2022 confirmation hearing and did not attend the confirmation hearing to orally assert any objection to the Plan.

In addition, ATS did not file a proof of claim before the confirmation hearing in order to assert its interest in the Sale Proceeds. The record shows that ATS received notice of Debtor's Bankruptcy Case on May 11, 2022, by virtue of the Suggestion of Bankruptcy filed and served in the Foreclosure Case. The Court finds that ATS had ample notice of the July 20, 2022 claims bar date. But ATS did not file a proof of claim, or file a motion to extend the time to file a proof of claim under Fed R. Bankr. P. 3002(c)(6),⁴⁶ or otherwise seek relief from the claims bar date.

C. ATS did not timely file a motion for reconsideration after confirmation.

The Court entered the Order Confirming Plan on December 2, 2022, and the Order Confirming Plan was served on ATS on December 5, 2022.

Under Fed. R. Bankr. P. 9023, a motion for reconsideration of an order may be filed within 14 days after entry of the order.⁴⁷ Therefore, ATS had until December 16,

⁴⁶ Under Fed. R. Bankr. P. 3002(c)(6), on motion of a creditor filed before or after the claims bar date, the Court may extend the deadline if it finds that notice was insufficient to give the creditor a reasonable time to file its claim.

⁴⁷ Fed. R. Bankr. P. 9023.

2022, to file a motion under Rule 9023 for reconsideration of the Order Confirming Plan.

On December 6, 2022 – prior to the expiration of the 14-day period for seeking reconsideration of the Order Confirming Plan – Debtor served ATS with the Motion. In the Motion, Debtor set out in detail his basis for asking the Court to release the Sale Proceeds to him: that his Plan provided for the return of the Sale Proceeds to him, that the Court entered the Order Confirming Plan on December 2, 2022, and that a confirmed plan binds creditors under § 1327(a).

Nevertheless, even though ATS was served with Debtor’s Motion before the time had expired for seeking reconsideration of the Order Confirming Plan, ATS did not file such a motion for reconsideration under Rule 9023. In fact, ATS did not respond to Debtor’s request for the Sale Proceeds until it filed an objection on January 4, 2023, just one day before the hearing on the Motion.

D. ATS is bound by the Order Confirming Plan.

Debtor expressly provided in his Plan that he was seeking the return of the Sale Proceeds to him. ATS had notice of Debtor’s Plan in time to object, but it did not object to the Plan before confirmation or timely file a motion for reconsideration after entry of the Order Confirming Plan. The Order Confirming Plan is a final order of this Court, and ATS is bound by the terms of the confirmed Plan under § 1327(a).

E. Even if ATS were not bound by the Order Confirming Plan, it does not hold a valid claim against the Sale Proceeds.

In addition, the Court finds that even if ATS were not bound by the Order Confirming Plan, it does not hold a valid claim against the Sale Proceeds. First, as set forth above, ATS had actual notice of Debtor's bankruptcy case in ample time to file a proof of claim, but it failed to file a claim or request an extension to file a claim in this Chapter 13 case. Second, Debtor provided the Court with evidence that ATS removed any improvements that it had made to the Property in a manner that diminished the value of the Property.⁴⁸

Therefore, Debtor's Motion should be granted and the Sale Proceeds held in the Court's registry should be released to Debtor.

Accordingly, it is

ORDERED:

1. Debtor's *Motion for Release of Funds Deposited in Court Registry* (Doc. No. 58) is **GRANTED**.

⁴⁸ Doc. Nos. 72, 73.

2. The Clerk of Court is directed to release the Sale Proceeds in the amount of \$113,135.28 from the registry of the Court made payable to Debtor Ryan Christopher,

c/o Alyx Cassel, Esq.
The Law Office of Alyx C. Cassel, LLC
478 E. Altamonte Dr., Suite 108-315
Altamonte Springs, FL 32701.

Attorney Alyx Cassel is directed to serve a copy of this Order on interested parties who are not CM/ECF users and to file a proof of service within three days of the date of this Order.